



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:

APR 27 2004

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

PUBLIC COPY

INSTRUCTIONS:

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he performed at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on information provided by [REDACTED] for whom the applicant claimed to have worked.

On appeal, counsel for the applicant requested that he be provided with a copy of the record of proceedings. Counsel's request has been complied with.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

On the application, Form I-700, the applicant claimed to have performed qualifying agricultural employment for farm labor contractor [REDACTED] as follows:

- 28 man-days pruning grapes at [REDACTED] in Kern County, California, from January 4, 1986 to February 5, 1986; and
- 100 man-days picking oranges at [REDACTED] in Tulare County, California, from February 7, 1986 to May 25, 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a notarized employment statement, both purportedly signed by [REDACTED]. It is noted that the I-705 affidavit is not signed by the applicant. Such a document can have no probative or evidentiary value.

The applicant was later interviewed by a legalization officer of INS (now, Citizenship and Immigration Services, or CIS). It is noted that, according to that legalization interviewer's worksheet, Form I-696, the officer indicated that fraud was suspected, and recommended denial of the application.

Subsequently, in the course of attempting to verify the applicant's claimed employment, the director acquired information which contradicted the applicant's claim. On September 16, 1987 [REDACTED] admitted in a sworn statement taken in the presence of a Service officer, that all of the Special Agricultural Worker documentation signed by him for [REDACTED] was fraudulent. On July 18, 1988 [REDACTED] pled guilty in U.S.

District Court for the Eastern District of California in Fresno, California, to conspiracy to create and supply

fraudulent documentation to SAW applicants, in violation of 8 U.S.C. § 1160(b)(7)(A)(ii) and 18 U.S.C. § 371.

On February 24, 1992, the applicant was advised in writing by the director of the adverse information and of the director's intent to deny the application. The applicant was granted thirty days to respond. In response to the Notice of Intent to Deny, counsel for the applicant requested additional time in which to reply to the adverse evidence obtained by the director. However, despite having been accorded additional time in which to submit a response, no further evidence or statement was provided by counsel or the applicant. The director concluded the adverse information had not been overcome, and denied the application on April 10, 1992.

On appeal, applicant's previous counsel asserts that, during the qualifying period, the applicant also worked for another farm labor contractor [REDACTED]. In support of this assertion, counsel provides a statement along with an I-705 affidavit from [REDACTED] who affirms that the applicant performed 96 man-days picking and pruning grapes at her farm in Tranquility, California, from December 14, 1985 to May 15, 1986. In addition, counsel submits form affidavits from [REDACTED] both of whom represent themselves as alleged co-workers of the applicant who performed field work on "the ranch" from December 1985 to June 1986. The wording of both "fill-in-the-blank" affidavits is identical, with relevant information inserted into blank spaces. These documents appear to have been prepared for the affiants rather than by the affiants. As such, the affidavits do not have the appearance of originating from the personal knowledge of the affiants.

Moreover, the affidavits from [REDACTED] fail to specify the number of man-days worked by the applicant, the applicant's exact dates of employment, the actual duties performed by the applicant, or even the name (or location) of the farm where the alleged agricultural work was performed. Such affidavits cannot be considered independent, corroborative evidence sufficient to establish the applicant's claimed employment in agriculture.

The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, *i.e.*, if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible.

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility which was not initially put forth on the application. In such instances, credible evidence may be required to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this

claim initially. The instructions to the application do not encourage an applicant to limit his claim; rather, they encourage him to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by [REDACTED] was first brought to the attention of INS when the applicant responded to the notice of intent to deny. At the time of filing, the applicant did not reference this employment on the Form I-700 application, nor did he submit corroborating materials to document the alleged employment with [REDACTED] at that time. However, the very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker. The applicant failed to explain why this entirely new claim to eligibility was not advanced at the initiation of the application process.

Larger issues of credibility arise when an applicant claims employment which is called into question in the course of attempting to verify that employment through an investigation, and that applicant later attempts to establish eligibility with a *different* employer, heretofore never mentioned by the applicant. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence as regards the applicant's initial claim. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for farm labor contractor [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.